

**THIS ORDER HAS BEEN STAYED  
BY THE  
SUPERIOR COURT OF NEW JERSEY**

ORDER ON EMERGENT APPLICATION  
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IN THE MATTER OF ALAN  
WASSERMAN, M.D.

v.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-  
MOTION NO. M-  
BEFORE PART: F  
JUDGE(S): GRAVES  
MESSANO

EMERGENT APPLICATION

FILED: 10/22/2010

BY: Alan Wasserman, M.D.

ANSWER(S) FILED: 10/25/2010

BY: State Board of Medical  
Examiners

APPEARANCE ONLY:

ORDER  
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THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS  
25th DAY OF OCTOBER, 2010, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION  
FOR


STAY  
LEAVE TO FILE AN  
OVERLENGTH BRIEF

GRANTED	DENIED	OTHER
(x)	( <input type="checkbox"/> )	( <input type="checkbox"/> )

SUPPLEMENTAL:

The order of the State Board of Medical Examiners dated October 18,  
2010, is stayed pending appeal.

FOR THE COURT:



CARMEN MESSANO, J.A.D.

**FILED**

October 18, 2010

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

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IN THE MATTER OF SUSPENSION OR	:	
REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
ALAN WASSERMAN, M.D.	:	FINAL DECISION AND ORDER
LICENSE NO. 25MA03065200	:	
	:	
TO PRACTICE MEDICINE AND SURGERY	:	
IN THE STATE OF NEW JERSEY	:	

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This matter was opened to the New Jersey State Board of Medical Examiners ("the Board") upon the filing of an Administrative Complaint on December 19, 2008 by the Attorney General of New Jersey, Deputy Attorney General Joan D. Gelber appearing.<sup>1</sup> Count I of the Complaint alleged misrepresentation and deception, gross and/or repeated negligence, professional misconduct, and failure to comply with regulations administered by the Board, with respect to performance and interpretation of 17 magnetic resonance imaging (MRI) studies in connection with eleven patients.<sup>2</sup> More specifically, the Attorney General alleged

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<sup>1</sup> An amended Complaint was subsequently filed on October 8, 2009, with certain minor corrections to the facts alleged in the original Complaint.

<sup>2</sup>With respect to two of the patients cited in the Complaint, W.A. and M.V., MRI films could not be located. Evidence relating to these allegations was not permitted to be presented at trial and was not addressed in the Initial Decision.

that respondent engaged in a pattern of issuing MRI interpretations in reports that were deficient primarily because most of them did not indicate patient's clinical history, and were based on images that were consistently of such poor quality as to be "non-diagnostic."<sup>3</sup> The Complaint further alleged that findings such as muscle spasm and/or straightening of lordosis, which were included in the reports, were not findings that could or should be made in interpreting MRIs, because muscle spasm is a clinical diagnosis, and straightening of lordosis as perceived on an MRI may be caused by the position of the patient while undergoing the MRI, or may be related to degenerative changes, as opposed to muscle spasm. Count I of the Complaint further alleged that respondent submitted claim forms which did not adequately identify the name of respondent's facility or the provider of the service, and that claim forms were submitted bearing no signature of the physician-provider. Violations of N.J.S.A. 45:1-21(b), (c) and/or (d), as well as N.J.A.C. 13:35-2.6, N.J.A.C. 13:35-6.5, N.J.A.C. 13:35-6.16(k)2 and N.J.A.C. 13:35-6.17(c)4 were separately alleged.

Count II of the Complaint alleged professional misconduct based upon respondent's operation of an MRI facility from 1998

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<sup>3</sup> The ALJ concluded that allegations of dishonesty, fraud, deception, misrepresentation, false promise and false pretense were not pursued at trial. Initial Decision at p. 12 (hereinafter "I.D.").

through 2002 before obtaining the requisite licensure by the Department of Health and Senior Services (DHSS). Count III alleged a violation of Dr. Wasserman's duty to cooperate with a Board investigation pursuant to N.J.A.C. 13:45C-1.3. The Attorney General issued a request for information on or about November 17, 2008, and it was alleged that respondent failed to timely respond to the inquiry.

On or about January 29, 2009, an Answer was filed on behalf of respondent by respondent's counsel, Joseph M. Gorrell, Esq. denying the allegations. The matter was transferred to the Office of Administrative Law, where it was heard before the Honorable Jeffrey A. Gerson, Administrative Law Judge, on October 22 and 23, 2009, and December 8 and 18, 2009. Judge Gerson's 18-page Initial Decision issued on August 13, 2010. Judge Gerson noted at the outset of the Initial Decision that the genesis of the Complaint stemmed from a complaint by Robert Goldstone, M.D., who had referred Dr. Wasserman's reports to the Attorney General. Dr. Goldstone, an orthopedist, had encountered Dr. Wasserman's MRI reports and films when he reviewed them in the course of his employment as an insurance company reviewer, or for defense attorneys representing insurance companies. (I.D. at p.3) Although Dr. Goldstone offered testimony at the hearing, Judge Gerson emphasized that he primarily relied on the expert opinions of Drs. Adam R. Hecht, the State's expert, and Dr. Alan

Rubin, respondent's expert, both Board-certified radiologists, in reaching his findings and conclusions. (I.D. at p.14) A central issue argued in the case was the quality of images produced by Dr. Wasserman's equipment, a Toshiba Tesla .064 MRA machine. The ALJ noted: "From the testimony of all the experts, there is no doubt that the images produced by the MRI machine used by Dr. Wasserman were inferior to those that present-day technology can produce." (I.D. at p.10)

The rationale behind Judge Gerson's ultimate determinations was based upon his analysis of the expert testimony. Dr. Wasserman's expert, Allan B. Rubin, M.D., pointed out that Dr. Wasserman's examinations were performed on "an early generation Toshiba Corporation open (non-claustrophobic) MRI system of low field strength." (See, Rubin Report, R-2). Dr. Rubin's report noted that

"[t]he physicians who are reviewing the images of Dr. Wasserman's low field MRI are comparing them to later generation high field units. . . . However, it is an error in thinking to compare different systems when evaluating images[.]" (Emphasis in original.) (R-2 at p.2)

According to Dr. Rubin, the crucial questions in evaluating Dr. Wasserman's performance are whether the MRI system he used was F.D.A. approved; whether the images produced are within the diagnostic parameters and capability of the system used; whether the images are diagnostic; and whether the radiologist is interpreting the images correctly. Ibid.

Dr. Rubin found that the images produced by Dr. Wasserman's facility were diagnostic, and although he noted certain "discrepancies" in several reports, he stressed that in his opinion "Dr. Wasserman's diagnosis was correct in the vast majority of his diagnostic impressions." (R-2, p.9)

The State's expert, Dr. Hecht, was highly critical of the images produced by respondent's MRI machine, which he termed of such poor quality as to be "nondiagnostic." He also criticized Dr. Wasserman's interpretations of those images, finding Dr. Wasserman's reports "subscribed to a pattern of exaggeration and misdiagnosis[.]" (See Hecht Report, P-4, at p.14) Hecht's report explained that patient motion during MRI examinations, or patient obesity, can compromise image quality, and that any radiology report interpreting such images needs to address this. (P-4 at p.2)

The ALJ compared the conclusions of the experts. With respect to the nine patients cited in the Complaint, the ALJ found simple negligence with respect to Dr. Wasserman's reports analyzing the MRIs of three of the patients (J.F., M.G. and D.D.). He also noted significant deficiencies in four of the remaining reports, such as a failure to address certain inadequacies in the clarity of the images caused by patient motion or obesity.

The ALJ's specific findings with respect to the patients cited in the Complaint were:

A.A. (MRI date September 7, 2005: The ALJ found the claim of negligence was not substantiated. (I.D. at p.14)

R.G. (MRI date October 10, 2001): The ALJ found that respondent's report failed to address patient motion, which resulted in a loss of image detail. The ALJ found this was a departure from accepted standards of medical practice. (I.D. at pp.14-15)

M.P.L.<sup>4</sup> (MRI date September 24, 2003): The ALJ found the proofs "in equilibrium" as to negligence. However, he noted that Dr. Wasserman's findings of muscle spasm and straightening of normal lordosis should not have been included. Initial Decision at 15.

S.M. (MRI date September 24, 2003): The ALJ found the proofs "in equilibrium." (I.D. at p.15)

M.O.: Again, as with patient R.G., the ALJ found that Dr. Wasserman did not address in his report the degree to which patient motion distorted the final result. (I.D. at p.15)

J.F. (MRI date November 12, 2001): The ALJ found that disc bulges found by Dr. Wasserman could not be confirmed by either expert because of the poor image quality; he concluded that adequate interpretation of the images was not possible. (I.D. at p.15)

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<sup>4</sup> The Initial Decision indicates "M.L.P.," however this appears to be a typographical error.



M.G. (MRI date December 20, 2000): The ALJ found that neither of the experts agreed with Dr. Wasserman's findings, his own expert finding a "bulge" at a different level than did Dr. Wasserman. The ALJ further found that this was because of the difficulty in reading the MRI result. (I.D. at p.16)

D-.D.: The ALJ found that neither expert was able to confirm Dr. Wasserman's finding of disc bulge, due to the poor image quality. With respect to the lumbar spine MRI, both experts confirmed that the patient's obesity caused decreased resolution of the image, which should have been mentioned in Dr. Wasserman's report. The ALJ found that the omission of that information in the report was a "substantial deviation," which even respondent's expert did not dispute. (I.D. at p.16)

M.B.: Although finding that the evidence was in equipoise as to whether disc herniation can be distinguished from chronic degenerative changes, the ALJ found that Dr. Wasserman's report did not address the issue of patient obesity.<sup>5</sup>

At the outset of Judge Gerson's ultimate findings, he found as fact that Dr. Wasserman, "over a period of more than five years, aided in the production and evaluation of MRI films that were of insufficient quality to lead to trustworthy, reliable medical conclusions." (I.D. at p.14) After making specific

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<sup>5</sup> This appears to be a misstatement. Both expert reports refer to patient motion, rather than patient obesity, as a likely cause of poor image quality.

findings of fact with respect to each of nine patients, he summed up the "essence" of the allegations against Dr. Wasserman: that "over a period of many years [he] interpreted MRI results that were of such poor quality that either his findings could not be confidently confirmed, or patient conditions could have existed that would not have been revealed by the produced images." (I.D. at p.16) While giving "the benefit of the doubt" to respondent, by finding simple negligence repeated over many years (as opposed to gross negligence), the ALJ was "convinced that there was at a minimum a casual approach by Dr. Wasserman to these MRI exams and at worst a complete indifference." (I.D. at p.16-17) He concluded that with respect to Count I, Dr. Wasserman's evaluations of MRI films "were at best cavalier, and at worst dangerous to the patients." (I.D. at p.14)<sup>6</sup>

With respect to Count II, alleging professional misconduct, in that the MRI facility operated by Dr. Wasserman was not properly licensed by the Department of Health and Senior Services (DHSS) during the years 1998 through 2002, the ALJ indicated that this issue was a matter subject to the jurisdiction of DHSS, as opposed to that of the Board, and concluded that a violation could not be characterized as professional misconduct. The ALJ subsequently noted that the violation was "at best a technical

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<sup>6</sup> Thus the Complaint's allegation of a "pattern" of negligence was upheld by the ALJ.

violation not warranting more than a reprimand." Initial Decision, page 17. The ALJ nevertheless essentially found no cause for action with respect to Count II.

Count III of the Complaint, alleging Dr. Wasserman's failure to cooperate with a Board investigation, was expressly dismissed in the Initial Decision. (I.D. at p.17)

Exceptions to the Initial Decision were filed by the Attorney General on August 17, 2010, and by Respondent in a submission dated September 2, 2010. The Attorney General subsequently filed a response to Respondent's exceptions dated September 8, 2010. On September 15, 2010, oral argument was held before the Board on the exceptions.

In his written exceptions, and at oral argument on the exceptions, Respondent's counsel, Joseph M. Gorrell, Esq., stressed that the ALJ had found negligence only with regard to three of the eleven patients cited in the Complaint. He argued that Dr. Rubin, Dr. Wasserman's expert, was superior to Dr. Hecht, in that Dr. Rubin was experienced in the use of the .064 Tesla machine, while Dr. Hecht was only experienced with more up-to-date equipment. In addition, Mr. Gorrell contended that Dr. Rubin had teaching experience, while Dr. Hecht did not. Thus, he asserted that Dr. Rubin's finding that the images relied upon by Dr. Wasserman were diagnostic should be given credence.

Mr. Gorrell further argued that Dr. Wasserman had been aware of the limitations of the .064 Tesla, and accordingly limited his practice to primarily dealing with spinal cases, referring out other cases, requiring sharper imaging (such as brain images) to other providers.

Moreover, Mr. Gorrell argued that the eleven patients cited in the Complaint were not a random sampling of Dr. Wasserman's cases, and could not be said to accurately reflect his practice over the years. The age of the cases cited, ranging from the years 2000 through 2005, was also questioned, as was the fairness of evaluation of Dr. Wasserman's work based upon this limited number of cases.

Deputy Attorney General Joan D. Gelber, in written exceptions and oral argument, in effect asserted that the use of the .064 Tesla MRI machine, which she characterized as "antiquated," is in and of itself negligence. She maintained that the films taken by Dr. Wasserman were of poor quality, and could not be relied upon to substantiate Dr. Wasserman's claimed findings. She pointed out that Dr. Wasserman's equipment, bought second-hand in 1996, was used until he closed his office in 2009, that the ALJ found the images it produced were far from state-of-the-art, and that they constituted a disservice to Dr. Wasserman's patients. The Attorney General highlighted the ALJ's observation that the testimony given by Dr. Rubin concerning the

quality of the images used by Dr. Wasserman "was tempered by his 'back-door' assertion" that the Tesla .064 produced results that were typical for the images produced by that product. (I.D. at p.14) The D.A.G. further noted that Dr. Wasserman routinely failed to call a patient back for a new examination if the MRI images were inadequate; and routinely failed to identify in his reports the limitations imposed by the lack of clarity of the images produced.

As to the argument that the cases cited in the Complaint and considered at the hearing were not a random sample of Dr. Wasserman's work, D.A.G. Gelber contended that the Board is not required to evaluate a random sampling of cases prior to imposing discipline, and in the course of its history it has generally investigated and acted upon particular cases.

After hearing the arguments of the parties, and following an adjournment for deliberations in closed session, the Board affirmed the ALJ's findings of fact and conclusions of law with respect to Counts I and III of the Complaint. The Board affirmed in part the ALJ's findings and conclusions with regard to Count II, that under the circumstances disciplinary action was not warranted in connection with the operation of Dr. Wasserman's facility without licensure by DHSS from 1998 to 2002. However, the Board rejected the ALJ's conclusion that the Board did not have jurisdiction to discipline a licensee for conduct directly

related to the practice of medicine resulting from the violation of another State agency's regulations.

#### DISCUSSION OF BOARD'S FINDINGS AND CONCLUSIONS

##### Count I

The Board, relying upon the expert testimony, expert reports, and its own expertise, and having examined the MRI films placed in evidence, affirms the ALJ's findings as to Count I. Having viewed the MRIs, the Board determined in its own expertise that they were so deficient as to unquestionably not be of diagnostic quality. Accordingly, the Board finds that respondent, over a period of years, "interpreted MRI results that were of such a poor quality that they either could not be competently confirmed, or there could have been conditions that existed that would not have been revealed by the images," and that this conduct constitutes repeated acts of negligence. T14-5 to 13.<sup>7</sup> The Board has considered the record, and the arguments presented, and declines as did the ALJ, to draw a bright line and find that respondent's use of the .064 Tesla Toshiba machine was in and of itself to engage in negligence. As technology results in equipment that is continually being improved, it is difficult to find an obligation to upgrade equipment at any specific point in time. The Board is troubled, however, by Dr. Wasserman's consistent failure to delineate the shortcomings of the images in

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<sup>7</sup> T = Transcripts of oral argument, September 15, 2010.

his reports, whether due to patient movement, patient obesity, or unclear imaging due to the limitations of the machine.

The Board is particularly struck by the fact that some of Dr. Wasserman's reports described things that could not objectively be seen: the report on J.F., where Dr. Wasserman's report described disc bulges unseen by Dr. Hecht or Dr. Rubin; the report on M.G., where Dr. Rubin found a posterior annular bulge at the C 5/6 level, not the C 4/5 level found by Dr. Wasserman, and where Dr. Hecht found that no reasonable radiologist would concur with Dr. Wasserman's finding; the report on D.D., where Dr. Wasserman described a disc bulge that neither expert could confirm. The Board finds that this over-reading of the images, i.e., reading into them something that was not there, constituted violations of the standard of care, and fully support the ALJ's conclusions that respondent performed at best "cavalier" evaluations. (I.D. at p.14) Accordingly, the Board affirms the ALJ's conclusion that respondent engaged in a pattern over multiple years of repeated acts of negligence in violation of N.J.S.A. 45:1-21(d).

#### Counts II

During the time frame at issue in Count II, prior to the enactment of N.J.S.A. 26H-12(f), the Board finds that there was some confusion in the regulated community with regard to the licensure requirement for facilities such as Dr. Wasserman's Open

MRI of North Jersey, where MRI services were offered in the private offices of physicians. Moreover, the record indicates that Dr. Wasserman sought guidance from the Board during this period, and apparently received no response. Dr. Wasserman also sought legal advice, and was advised that a private MRI facility such as Dr. Wasserman's did not require licensure. Thus the Board finds that the state of the applicable law was unclear to respondent, that Dr. Wasserman made good faith efforts to ascertain and comply with the law, and ultimately sought and obtained licensure from DHSS, which did not sanction him. For this reason, the Board affirms the Initial Decision's conclusion and exercises its discretion to find that a determination of professional misconduct and imposition of a sanction on these facts is not warranted.

Nevertheless, the Board expressly rejects the ALJ's conclusion that the Board has no authority to find professional misconduct where its licensees violate laws or regulations enforceable by DHSS or any other agency, and where such violations relate to the practice of medicine. The Board is legally authorized to exercise its discretion in defining professional misconduct. Cf. In re Polk, 90 N.J. 550, 574 (1982). It would certainly be within the Board's authority to consider disciplinary action were a physician operating an MRI facility to



consistently violate DHSS licensure requirements for that facility.

### Count III

Inasmuch as a formal Complaint was filed on December 19, 2008, and Dr. Wasserman had timely responded to previous requests for information, the Board affirms the ALJ's findings that this conduct was de minimis, and dismisses Count III of the Complaint.

### Sanctions

The ALJ, in his Initial Decision, found that respondent's conduct warranted a six month suspension, three months of which would be actively served. In addition, the ALJ recommended a \$10,000.00 civil penalty, as well as "the Attorney General's fees." These "fees," including investigative costs and attorney fees, are addressed herein.

In oral argument in mitigation of penalty, that followed immediately after the Board announced its findings, Dr. Wasserman testified as to his personal history, including his wife's death from diabetes, which left him to raise two physically challenged children<sup>8</sup> on his own. At present, Dr. Wasserman is undergoing treatment for prostate cancer.

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<sup>8</sup>Dr. Wasserman's wife gave birth to triplets; however one of the children died not long after birth. Dr. Wasserman's two remaining children were born with bone deformities requiring many surgeries over a period of years, according to Dr. Wasserman's testimony.

Concerning the allegations of negligence, Dr. Wasserman testified that although the MRI machine he used was slow, he believed that by limiting its use to spinal studies and bone work, he compensated for the defects of the machine. He insisted that he never had any complaints, and he believed that his work was appropriately professional.

Dr. James Orsini, a practicing medical oncologist, testified that he had known respondent for more than 30 years, and had studied medicine with him in Bologna, Italy. He testified that he had worked with Dr. Wasserman directly for several years as the owner of a radiology center in Nutley, New Jersey, where respondent was the chief of radiology. Dr. Orsini further testified that he never had a problem with Dr. Wasserman's work, and often brought cases to Dr. Wasserman for a second opinion. In addition, he testified as to Dr. Wasserman's character, as demonstrated by his responsible parenting under difficult circumstances.

Dr. Wasserman's attorney indicated that he disagreed with the Board's finding with respect to Count I. He argued that Dr. Wasserman is sincere, that any inadequacies were not deliberate, and that Dr. Wasserman himself had believed that his work was performed correctly. He cited Dr. Wasserman's self-imposed limitation on the scope of work he would agree to undertake, and characterized this as professional and ethical conduct. Mr.

Gorrell maintained that imposition of any active term of suspension would serve no purpose, particularly since the facility operated by Dr. Wasserman is no longer in operation, and the MRI machine no longer in use.

Further, counsel asked that the Board waive any penalties. Additionally, he argued that there had been no cost breakdown provided as to each count, and that costs (including attorney fees) related to Counts II and II, where the Board took no action, should not be imposed. Respondent asserted financial difficulties, but did not provide any financial documents in support of this assertion.

The Attorney General argued for more stringent penalties, including an extended period of active suspension and a requirement of retraining. She noted that Dr. Wasserman, in his reports, was commenting on abnormalities that he could not have possibly seen, and by his use of inadequate images, risked missing an abnormality that actually did exist. This, she urged, demonstrated a lack of judgment. Although D.A.G. Gelber had previously argued to require respondent to make restitution to third party payors respondent had billed for the MRIs and interpretive reports in her written exceptions, this claim was not pursued in oral argument before the Board.

The Board has considered the record, including the testimony, argument and submissions in mitigation and the

Attorney General's arguments and well-documented certification of costs, and unanimously finds the terms of suspension imposed by the ALJ, i.e., six months of suspension, three months of which were to be actively served, should be affirmed. Respondent's repeated acts of negligence consisted of issuing interpretations of poor quality MRI images, without indicating that the findings of the reports were necessarily limited because of the deficiencies of these images. This inevitably had the potential to cause patient harm by failing to detect conditions that might require treatment, and by in some cases reading into the unclear images conditions that may not have existed. Patients and referring health care providers should be able to trust that the results of radiologic tests on which diagnoses and treatment are based are reliable.

A certification of investigative costs dated March 24, 2009 was submitted concerning investigative expenses incurred by the Enforcement Bureau in the amount of \$3,283.53. The Attorney General also sought expert witness fees for Dr. Hecht and Dr. Goldstone of \$8,871.30 and \$1,825.30, respectively, for time expended in review of records, preparation for trial and trial testimony time in a total amount of \$10,696.60. The costs incurred for OAL transcripts totaled \$1,689.60. The total amount of attorney fees sought, as set forth in the certification submitted by Deputy Attorney General Joan D. Gelber, was

\$60,392.50. Attached to Deputy Gelber's certification were billing sheets detailing specific attorney activities billed in this matter.

The Board has considered the investigative costs, expert fees and transcript charges, and finds those amounts reasonable in light of the conduct at issue, and the important State interest to be vindicated, i.e., protection of the public. See, Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996). The portion of investigative costs supported by signed and detailed contemporaneous time records are kept in the ordinary course of business by the Enforcement Bureau and contain a detailed recitation of the investigative activities performed. We also find that the rate charged, \$141.43 per hour, is reasonable, and take notice that investigative costs, approved many times in the past, are based on salaries of Enforcement Bureau employees divided by the total investigator hours. The fees paid to the expert witnesses of \$8,871.30 and \$1,825.30 are also reasonable in light of the amount of time expended and the interests at stake. The hearing transcript costs of \$1,689.60 are standard.

With respect to the attorney fees, we are mindful of the analysis directed by Furst v. Einstein Moomjy, Inc., 182 N.J. 1 (2004. See also Rendine v. Panzer, 141 N.J. 292 (1995). The billing rate for Deputy Gelber's time at \$175.00 is eminently reasonable for a Senior Deputy Attorney General of more than ten

years experience. The time expended is carefully documented, and given the conduct at issue, the Board does not find that the expenses incurred were excessive. However, the claim of serious fraud alleged in the Complaint was not upheld, nor was the Attorney General's burden sustained in Counts II and III. Therefore, we have in our discretion determined that only a portion of the attorney fees sought will be awarded. Moreover, the Board wished to temper its discipline in recognition of Dr. Wasserman's personal circumstances: his illness, and the fact that his remaining years of practice are likely to be limited based upon the state of his health and his age. The Board therefore determined to impose the entire amount of investigative costs, in the amount of \$3,283.53, the overwhelming bulk of which related to Count I, as well as \$10,960.60 in expert fees and \$1,689.60 in transcript costs. With respect to the attorney fees, however, which also were overwhelmingly attributable to Count I, the Board has determined to impose only a total of \$9,230.27. The Board affirmed the \$10,000 civil penalty imposed in the Initial Decision, thus imposing a total amount of \$35,000.00 in penalties, costs and attorney fees. The exhibit lists of the parties are attached and made a part of this order.

Accordingly,

IT IS, ON THIS 18th DAY OF October, 2010,

HEREBY ORDERED:

1. Respondent's license to engage in the practice of medicine and surgery in the State of New Jersey is hereby suspended for a period of six months. The first three months of the suspension are to be actively served, with the remainder to be served as a period of probation.

2. The suspension of license shall become effective on October 29, 2010,<sup>9</sup> in order to afford respondent's patients sufficient opportunity for transfer of their care. Respondent shall make appropriate arrangements for the medical records in his possession so that there can be continuous patient care for his present patients, if applicable.

3. No later than October 29, 2010, respondent shall forward his original license and biennial renewal card to: William V. Roeder, Executive Director, Board of Medical Examiners, P.O. Box 183, Trenton, NJ 08625-0183.

4. A civil penalty in the amount of \$10,000.00 is hereby imposed upon respondent for the violation of N.J.S.A. 45:1-21(d). Payment shall be in the form of a certified check or money order, made payable to the State of New Jersey, and forwarded no later than October 29, 2010 to the attention of William V. Roeder, Executive Director, at the address set forth above.

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<sup>9</sup> The Board announced on the record that the order would be effective in 30 days. Subsequently, the parties jointly requested that the effective date be extended to October 29, 2010, to accommodate scheduling concerns.

5. Costs and attorney fees in the total amount of \$25,000.00 are imposed upon respondent. Payment shall be in the form of a certified check or money order, made payable to the State of New Jersey, and forwarded no later than October 29, 2010 to the attention of William V. Roeder, Executive Director, at the address set forth above.

6. Respondent's failure to make timely payment may result in the filing of a certificate of debt. Moreover the Board reserves the right to seek any other appropriate collection proceedings authorized by law.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By: 

Paul Jordan, M.D.  
Board President



EXHIBIT LIST of COMPLAINANT ATTORNEY GENERAL  
I/M/O ALAN G. WASSERMAN, M.D.  
OAL DKT. BDSME 01669-2009N

P-1EV Dr. Wasserman's Certificate of Incorporation of Alan Wasserman, M.D., P.C., filed 3/26/99, with 10/20/99 Amendment of name to Alan Wasserman/Open MRI of North Jersey/DIA of Cherry Hill/DIA, PC., attaching copy of address documents listing Alan Wasserman, MD, PC address as 160 Market St., Saddle Brook, NJ, as mailed to Internal Revenue Service (provided by Dr. Wasserman during Medical Board investigation). (AG1-4)

P-2EV Department of Health and Senior Services' Records Custodian, 3/13/09 Certification of Department File document:  
2/20/90 Lease Agreement (excerpt) between Toshiba America Medical Credit, Inc. and Joseph F. Rooney, Jr., M.D., D.C. and Leonard F. Vernon, D.C. for one Toshiba 0.064T Access MRI System, to be delivered 2/24/90 to 160 Market St., Saddle Brook, NJ, as submitted by Dr. Wasserman's 3/13/03 letter to Calvin D. West, Executive Director - Governor's North Jersey Office, seeking exemption from licensure requirement (excerpt from certified Dept. of Health and Senior Services (DHSS) records. (AG5-12)

P-3EV Dr. Wasserman's 5/7/09 Answers to Complainant's Interrogatories including version of CV. (AG13-23)

P-4EV Adam R. Hecht, M.D., CV (AG24-26)

P-5EV Dr. Hecht's 11/17/08 expert report (AG27-41)

P-6EV "Atlas of Human Anatomy," Netter, MD, illustrations, CIBA-GEIGY 1989)

P-7EV Practice Guideline for the Performance of Magnetic Resonance Imaging (MRI) of the Adult Spine, ACR Practice Guideline, 2001 (Res. 13), Effective 1/1/02 (AG42-48)

P-8EV ACR Standard for Communication - Diagnostic Radiology, 1991 (Res. 5), Revised 1995 (Res. 10). (AG49-50)

P-9EV Dr. Wasserman's chart of A [REDACTED] A [REDACTED] as provided to Medical Board, including 9/7/05 reports of cervical and lumbar spine MRI studies (AG51-59)  
Dr. Wasserman's supplemental material for patient A [REDACTED] (AG60 -67)

P-10EVA [REDACTED] A [REDACTED], 9/7/05 cervical spine MRI<sup>1</sup>  
a) 5/1 sheet of film, sagittal slices  
b) 4/4 sagittal slices  
c) 5/3 sagittal slices  
d) 18/19 axial slices

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<sup>1</sup>NOTE: Each sheet of film is identified by the first image number, top left.

e) 18/7 axial slices

P-10EV<sup>1</sup> A [REDACTED] A [REDACTED], 9/7/05 lumbar spine MRI

- a) 7/3
- b) 4/5
- c) 7/1
- d) 18/14
- e) 18/2

P-11ID Cervical MRI, 4 films, anonymous male, example

- a)
- b)
- c)
- d)

P-12ID Lumbar MRI, 5 films, anonymous female, example

- a)
- b)
- c)
- d)
- e)

P-13EVD Dr. Wasserman's chart of R [REDACTED] G [REDACTED] as provided to Medical Board, including  
10/10/01 reports of cervical and lumbar spine MRI studies (AG68-79)  
Dr. Wasserman's supplemental material for patient G [REDACTED] (AG399-404)

P-14EV R [REDACTED] G [REDACTED], 10/10/01 cervical spine MRI

- a) 6/3
- b) 4/3
- c) 6/1
- d) 18/6
- e) 18/18

P-14EV R [REDACTED] G [REDACTED], 10/10/01 lumbar spine MRI

- a) 8/3
- b) 4/3
- c) 6/1

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<sup>1</sup>Where Dr. Wasserman provided more than one MRI study within the same jacket, the jacket will be marked with a single number, and the nature of each multi-film study, e.g., whether cervical or lumbar, will be identified on the film label.

- d) 18/6
- e) 18/18

P-15EV Dr. Wasserman's chart of M [REDACTED] "L [REDACTED]-P [REDACTED]" as provided to Medical Board, including 9/24/03 reports of cervical and lumbar spine MRI studies (AG80-89)  
Dr. Wasserman's supplemental material for patient L [REDACTED]-P [REDACTED] (AG90-98)

P-16EV M [REDACTED] P [REDACTED] L [REDACTED] 9/24/03 cervical spine MRI

- a) 4/4
- b) 7/3
- c) 7/1
- d) 18/8
- e) 18/20

P-16EV M [REDACTED] P [REDACTED] L [REDACTED] 9/24/03 lumbar spine MRI

- a) 7/1
- b) 7/3
- c) 18/5
- d) 4/4
- e) 18/17

P-17EV Dr. Wasserman's chart of S [REDACTED] M [REDACTED] as provided to Medical Board, including 2/15/05 reports of cervical and lumbar spine MRI studies (AG99-104)  
Dr. Wasserman's supplemental material for patient M [REDACTED] (AG105-121)

P-18EV S [REDACTED] M [REDACTED] 2/15/05 cervical spine MRI

- a) 7/3
- b) 7/1
- c) 4/6
- d) 18/8
- e) 18/20

P-18EV S [REDACTED] M [REDACTED] 2/15/05 lumbar spine MRI

- a) 7/3
- b) 7/1
- c) 4/6
- d) 18/15
- e) 18/3

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<sup>1</sup>Patient is identified on MRI films and insurance documents as M [REDACTED] P [REDACTED] L [REDACTED]

P-19EV Dr. Wasserman's chart of M [REDACTED] O [REDACTED] as provided to Medical Board, including 4/6/02 reports of cervical and lumbar spine MRI studies. (AG122-125)  
Dr. Wasserman's supplemental material for patient O [REDACTED] (405-409)

P-20EV M [REDACTED] O [REDACTED] 4/6/02 cervical spine MRI

- a) 7/3
- b) 18/17
- c) 7/1
- d) 4/4
- e) 18/5

P-20EV M [REDACTED] O [REDACTED] 4/6/02 lumbar spine MRI

- a) 6/1
- b) 18/22
- c) 18/10
- d) 6/3
- e) 4/4

P-21EV Dr. Wasserman's chart of J [REDACTED] F [REDACTED] as provided to Medical Board, including 11/12/01 and 11/19/01 reports of cervical and lumbar spine MRI studies (AG126-130)  
Dr. Wasserman's supplemental material for patient F [REDACTED] (AG410-415)

P-22EV J [REDACTED] F [REDACTED] 11/12/01 cervical spine MRI

- a) 6/1
- b) 18/7
- c) 7/3 (includes a white blot)
- d) 4/5
- e) 18/19

P-22EV J [REDACTED] F [REDACTED] 11/19/01 lumbar spine MRI

- a) 4/6
- b) 18/6
- c) 18/18
- d) 7/1
- e) 7/3

P-23EV Dr. Wasserman's chart of M [REDACTED] G [REDACTED] as provided to Medical Board, including 12/20/2000 reports of cervical and lumbar spine MRI studies (AG131-134)  
Dr. Wasserman's supplemental material for patient G [REDACTED] (AG416-419)

P-24EV M [REDACTED] G [REDACTED] 12/20/2000 cervical spine MRI

- a) 4/6
- b) 11/3
- c) 11/1
- d) 24/18
- e) 24/6

P-25EV Dr. Wasserman's chart of D [REDACTED] D [REDACTED] as provided to Medical Board, including  
10/11/05 reports of cervical and lumbar spine MRI studies (AG135-138)  
Dr. Wasserman's supplemental material for patient D [REDACTED] (AG445-453)

P-26EV D [REDACTED] D [REDACTED] 10/11/05 cervical spine MRI

- a) 5/1
- b) 4/4
- c) 5/3
- d) 18/7
- e) 18/19

P-26EV D [REDACTED] D [REDACTED] 10/11/05 lumbar spine MRI

- a) 5/1
- b) 5/3
- c) 4/1
- d) 18/4
- e) 18/16

P-27EV Dr. Wasserman's chart of M [REDACTED] B [REDACTED] as provided to Medical Board, including  
8/22/06 reports of cervical and lumbar spine MRI studies (AG139-145)  
Dr. Wasserman's supplemental material for patient B [REDACTED] (AG420-427)

P-28EV M [REDACTED] B [REDACTED] 8/22/06 cervical spine MRI

- a) 18/20
- b) 4/4
- c) 7/1
- d) 18/8
- e) 6/3

P-28EV M [REDACTED] B [REDACTED] 8/22/06 lumbar spine MRI

- a) 7/1
- b) 4/5
- c) 7/3
- d) 18/15
- e) 18/3 (NOTE: READ BY WITNESS AS "c")

P-29EV Dr. Wasserman's chart of W [REDACTED] A [REDACTED] as provided to Medical Board, including reports of cervical and lumbar spine MRI studies (no films) (AG147-153)

- (a) W [REDACTED] A [REDACTED], 6/22/02 cervical spine report
- (b) W [REDACTED] A [REDACTED], 6/22/02 lumbar spine report
- (c) Dr. Wasserman's supplemental material for patient A [REDACTED] (AG428-435)

P-30EV Dr. Wasserman's chart of M [REDACTED] V [REDACTED] as provided to Medical Board, including reports of cervical and lumbar spine MRI studies (no films) (AG154-164)

- (a) M [REDACTED] V [REDACTED], 9/11/2000 right hip MRI report
- (b) M [REDACTED] V [REDACTED], 9/11/2000 lumbar spine MRI report
- (c) M [REDACTED] V [REDACTED], 11/14/2002 cervical spine MRI report
- (d) M [REDACTED] V [REDACTED], 11/14/2002 lumbar spine MRI report
- (e) Dr. Wasserman's supplemental material for patient V [REDACTED] (AG436-444)

P-31EV Dr. Hecht's vouchers (AG165)

- a) \$5,800.00
- b) \$3,071.30      Total: \$8,871.30

P-32EV Robert A. Goldstone, MD, CV (AG241-248)

[P-33 not offered]

P-34EV Dr. Goldstone's 1/15/07 report regarding A [REDACTED] A [REDACTED] (AG249-255)

P-35EV Dr. Goldstone's 5/3/04 report regarding R [REDACTED] G [REDACTED] (AG256-257)

P-36EV Dr. Goldstone's 8/14/06 report regarding M [REDACTED] P [REDACTED] L [REDACTED] (AG258-259)

P-37EV Dr. Goldstone's 1/8/08 report regarding S [REDACTED] M [REDACTED] (AG260-265)

P-38EV Dr. Goldstone's 2/15/05 report regarding M [REDACTED] O [REDACTED] (AG266-269)

P-39EV Dr. Goldstone's 12/3/02 report regarding J [REDACTED] F [REDACTED] (AG270-273)

P-40EV Dr. Goldstone's 11/25/07 report regarding M [REDACTED] G [REDACTED] (AG274)

P-41EV Dr. Goldstone's 7/30/08 report regarding D [REDACTED] D [REDACTED] (AG275-276)

P-42EV Dr. Goldstone's 5/1/07 and 6/14/08 reports regarding M [REDACTED] B [REDACTED] (AG277-283)

P-43ID Dr. Goldstone's 10/30/02 report regarding W [REDACTED] A [REDACTED] (AG284-287)

P-44ID Dr. Goldstone's 1/8/03 report regarding M [REDACTED] V [REDACTED] (AG288-290)

P-45EV Dr. Goldstone's voucher \$1,825.30

P-46EV Dept of Health and Senior Services' Records Custodian Certification of file, 3/13/09  
(AG166)  
DHSS file excerpts

P-47EV Dr. Wasserman's 6/6/00 application to Dept of Health and Senior Services (DHSS) for licensure of Open MRI of North Jersey, filed 6/6/00. (AG167-172)

P-48EV DHSS 10/16/01 letter to State Farm advising of no record of licensure for Open MRI of North Jersey (AG173)

P-49EV Dr. Wasserman's 10/30/01 application to DHSS for licensure of Open MRI of North Jersey (excerpt), including his Certification as owner and Medical Director, including 6/1/99 business lease for premises 160 Market St., Saddle Brook, NJ; filed by DHSS 11/21/01. (AG174-185)

P-50EV DHSS 1/30/02 letter to Dr. Wasserman's project manager Kevin O'Donnell listing deficiencies. (AG186-191)

P-51EV Report of Ambulatory Care Facility Survey 6/12/02 acknowledged 7/12/02 by Dr. Wasserman. (AG192-198)

P-52EV DHSS 7/12/02 letter to Kevin O'Donnell, Administrator, Open MRI of North Jersey, referencing deficiencies found on 6/12/02 site visit. (AG199)

P-53EV DHSS 8/9/02 letter to Open MRI of North Jersey Project Manager Kevin O'Donnell citing statutory and rule requirements for licensure and warning re operation without licensure; citing P.L. 1971, c. 136 and N.J.A.C. 8:43A. (AG200)

P-54EV DHSS Enforcement Action Alert 8/15/02 re survey 6/12/02 noting provision of MRI services without DHSS license since November 1998, referencing site visit report of deficiencies found. (AG201-203)

P-55EV DHSS 8/22/08 letter to State Farm re Open MRI of North Jersey pending licensure application but no present licensure. (AG203a)

P-56EV DHSS 8/29/02 letter to Dr. Wasserman allowing limited waiver from certain DHSS premises layout requirements, with additional requirements to be met. (AG204-205)

- P-57EV Dr. Wasserman's 9/20/02 letter to DHSS agreeing to comply. (AG206)
- P-58EV Dr. Wasserman's Project Manager letter 9/23/02 agreeing to submit Plan of Correction. (AG207)
- P-59EV Dr. Wasserman's 10/15/02 submission to DHSS listing Corrective Plan & Actions (handwritten DHSS notations in margins, from DHSS file). (AG208-216)
- P-60EV DHSS 12/13/02 Ambulatory Care Approval Report, noting prior unlicensed practice. (AG217-218)
- P-61EV DHSS letter 1/2/03 to Project Manager Kevin O'Donnell enclosing license issued 12/19/02 to Alan Wasserman, MD, P.C. to operate Open MRI of North Jersey. (AG219-220)
- P- 62EV Dr. Wasserman's 3/13/03 letter to Calvin D. West, Executive Director - Governor's North Jersey Office, seeking exemption from licensure requirement (excerpt as submitted to DHSS in certified records, enclosing 2/20/90 Lease Agreement (excerpt) between Toshiba America Medical Credit, Inc. and Joseph F. Rooney, Jr., M.D., D.C. and Leonard F. Vernon, D.C. for one Toshiba 0.064T Access MRI System, to be delivered 2/24/90 to 160 Market St., Saddle Brook, NJ. (AG221-234)
- P-63EV Director John Calabria's 6/13/03 letter to Dr. Wasserman confirming that Open MRI of Northern [sic] Jersey was not exempt from the licensure requirement (AG235)
- P-64EV Dr. Wasserman's 3/25 /09 letter "To Whom It May Concern" received by DHSS announcing closure of Open MRI of North Jersey (AG236)
- P-65EV DHSS Director Calabria's 4/1/09 letter to Dr. Wasserman re his 3/25/09 letter of facility closure and re 12/31/08 expiration of his facility license (AG237-238)
- P-66EV Dr. Wasserman's CV as submitted to DHSS in connection with Abdul Rehman's application for license renewal for Garden State Open MRI, Inc. (AG239-240)



P-67EV Administrative Subpoena 2/19/08 issued on behalf of State Board of Medical Examiners to Alan Wasserman, M.D. (AG291-292)

P-68EV Dr. Wasserman's 3/7/08 letter to Enforcement Bureau (AG293)

P-69EV Enforcement Bureau letter 3/26/08 to Dr Wasserman (AG294)

P-70EV Dr. Wasserman's 4/4/08 letter to Enforcement Bureau (AG295)

P-71EV SDAG letter 7/15/08 to Dr. Wasserman (AG296-297)

P-72EV SDAG's letter 8/6/08 to Dr. Wasserman, referencing 7/15/08 letter, and enclosing additional subpoena and copy of Division of Consumer Affairs rule N.J.A.C. 13:45C-1.1 re Duty to Cooperate (AG298-300)

P-73EV Dr. Wasserman's letter 8/22/08 to Enforcement Bureau (AG301-302)

P-74EV SDAG certified letter 11/17/08 to Dr. Wasserman with receipt (AG303-304)

P-75EV SDAG letter 12/19/08 to Dr. Wasserman advising of filed Administrative Complaint and identifying patients (AG305-306))

P-76EV Dr. Wasserman's 9/25/09 supplemental responses to Interrogatories, without CV, already marked at AG22) (AG307-312).

P-77EV Enforcement Bureau costs \$3,283.53, Certification 3/24/09 by Supervising Investigator Deborah Zuccarelli, with backup documents (AG327-332)

P-78 Trial transcript vouchers (reserved) 10/22/09 \$454.40; 10/23/09 \$294.40; 12/8/09\$419.20; 12/18/09 \$521.60; total \$1,689.60.

P-79 Attorney fees

P-80ID "Policies and Procedures" manual, Alan Wasserman, MD, PC, Open MRI of North Jersey

P-81EV Exhibit C to Dr. Wasserman's Answers to Interrogatories, Maintenance Records for MRI

**EXHIBIT LIST OF RESPONDENT ALAN WASSERMAN, M.D.**

**OAL - DOCKET BDSME 01669-2009N**

R1.-EV	Curriculum Vitae of Allan Rubin, M.D.
R2.-EV	Report of Allan Rubin, M.D.
R29-EV	5/15/01 email to John Shaffer from Alan Wasserman, M.D.
R30-EV	5/16/01 email from John Shaffer to Alan Wasserman, M.D.
R31-EV	5/16/01 email from Alan Wasserman, M.D. to John Shaffer
R32-EV	5/17/01 email from Neil Weisfeld to Alan Wasserman, M.D.
R33-EV	6/1/01 letter from David T. Lewis, Esq. to Alan Wasserman, M.D. with copies of cases enclosed.
R35-EV	12/4/01 fax from Bill Lohman to Kevin O'Donnell.
R36-EV	12/17/01 fax from Alan Wasserman, M.D. to Bill Lohman with 12/14/01 letter and floor plans enclosed.
R37-EV	5/24/02 letter from Kevin O'Donnell to Len Dileo
R38-EV	6/10/02 letter from Kevin O'Donnell to Len Dileo
R39-EV	6/13/02 letter from Kevin O'Donnell to Jorge Esmart at NJDHSS.
R40-EV	6/26/02 letter from Len Dileo to John Calabria, Director of NJDHSS with copy of 1/30/02 letter from John Calabria to Kevin O'Donnell, waiver application and response to comments enclosed.
R41-EV	7/3/02 NJDHSS Waiver Request Transmittal Form.
R42-EV	7/10/02 letter from Kevin O'Donnell to Anthony Kobylarz
R43-EV	7/22/02 letter from Alan Wasserman, M.D. to Josephine Faber, R.N.
R44-EV	7/22/02 response of Alan Wasserman, M.D., P.C. to NJDHSS survey of 6/12/02.
R45-EV	8/1/02 letter from Kevin O'Donnell to Anthony Kobylarz
R46-EV	11/22/02 letter from Kevin O'Donnell to Josephine Faber, R.N.
R47-EV	5/19/03 email from Gail Lemaldi to Anthony Kobylarz.
R48-EV	11/21/03 application for NJDHSS ambulatory care facility ("ACF") license renewal.
R49-EV	12/22/03 letter from John Calabria to Alan Wasserman, M.D., P.C. with NJDHSS ACF license enclosed.
R50-EV	11/29/04 application for NJDHSS ACF license renewal.
R51-EV	1/5/05 letter from John Calabria to Alan Wasserman, M.D., P.C. with NJDHSS ACF license enclosed
R52-EV	12/16/05 application for NJDHSS ACF license renewal.

R53-EV 1/10/06 letter from John Calabria to Alan Wasserman, M.D., P.C. with NJDHSS ACF license enclosed.

R54-EV 12/7/06 application for NJDHSS ACF license renewal.

R55-EV 12/17/07 application for NJDHSS ACF license renewal.

R56-EV 1/31/07 letter from John Calabria to Alan Wasserman, M.D. P.C. with NJDHSS ACF license enclosed.

R57-EV 2/14/08 letter from John Calabria to Alan Wasserman, M.D., P.C. with NJDHSS ACF license enclosed.

R58-EV 7/6/01 letter from Kevin O'Donnell to William Roeder

R59-EV 10/31/01 letter from William Roeder to Kevin O'Donnell

R60-EV 11/1/01 letter from Kevin O'Donnell to William Roeder

R61-EV 11/17/02 letter from Kevin O'Donnell to William Roeder

R62-EV 8/1/02 letter from Kevin O'Donnell to William Roeder

R63-EV 9/27/02 letter from Kevin O'Donnell to William Roeder